

HOUSE BILL No. 1213

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-2-21.

Synopsis: Credit scoring. Imposes several requirements on an insurer's use of credit information in the underwriting of personal property and casualty insurance.

Effective: July 1, 2003.

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January 8, 2003, read first time and referred to Committee on Insurance, Corporations and Small Business.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1213

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-2-21 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 21. Use of Credit Information**

5 **Sec. 1. As used in this chapter, "adverse action" means:**

- 6 (1) a denial or cancellation of;
7 (2) an increase in a charge for; or
8 (3) a reduction or other adverse or unfavorable change in the
9 terms of coverage or amount of;

10 **insurance in connection with the underwriting of a personal**
11 **insurance policy.**

12 **Sec. 2. As used in this chapter, "affiliate" means a company that**
13 **controls, is controlled by, or is under common control with another**
14 **company.**

15 **Sec. 3. As used in this chapter, "applicant" means an individual**
16 **who has applied with an insurer for coverage under a personal**
17 **insurance policy.**



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1 Sec. 4. As used in this chapter, "commissioner" refers to the
2 commissioner appointed under IC 27-1-1-2.

3 Sec. 5. As used in this chapter, "consumer" means an:

4 (1) insured whose:

5 (A) credit information is used; or

6 (B) insurance score is calculated;

7 in the underwriting or rating of a personal insurance policy;
8 or

9 (2) applicant for a personal insurance policy.

10 Sec. 6. As used in this chapter, "consumer reporting agency"
11 means a person that, for a monetary fee or dues, or on a
12 cooperative nonprofit basis, regularly engages in the practice of
13 assembling or evaluating consumer credit information or other
14 information concerning consumers for the purpose of furnishing
15 consumer reports to third parties.

16 Sec. 7. As used in this chapter, "credit information" means
17 credit related information:

18 (1) derived from a credit report;

19 (2) found on a credit report; or

20 (3) provided on an application for a personal insurance policy.

21 The term does not include information that is not credit related,
22 regardless of whether the information is contained in a credit
23 report or in an application, or is used to calculate an insurance
24 score.

25 Sec. 8. As used in this chapter, "credit report" means a written,
26 an oral, or another communication of information by a consumer
27 reporting agency concerning a consumer's creditworthiness, credit
28 standing, or credit capacity that is used or expected to be used or
29 collected as a factor to determine personal insurance policy
30 premiums, eligibility for coverage, or tier placement.

31 Sec. 9. As used in this chapter, "department" refers to the
32 department of insurance created by IC 27-1-1-1.

33 Sec. 10. As used in this chapter, "insurance producer" has the
34 meaning set forth in IC 27-1-15.6-2(7).

35 Sec. 11. As used in this chapter, "insurance score" means a
36 number or rating that is derived from an algorithm, computer
37 application, model, or other process that is based on credit
38 information for the purpose of predicting the future insurance loss
39 exposure of an individual consumer.

40 Sec. 12. As used in this chapter, "insured" means an individual
41 entitled to coverage under a personal insurance policy.

42 Sec. 13. As used in this chapter, "insurer" refers to an insurer

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(as defined in IC 27-1-2-3) that issues a personal insurance policy.

Sec. 14. As used in this chapter, "personal insurance policy" means a policy that:

- (1) provides one (1) or more of the kinds of insurance described in Class 2 or Class 3 of IC 27-1-5-1; and
- (2) is underwritten on an individual basis for personal, family, or household use.

Sec. 15. This chapter does not apply to commercial insurance.

Sec. 16. An insurer that uses credit information to underwrite or rate risks shall not do the following:

- (1) Use an insurance score that is calculated using income, gender, address, ZIP code, ethnic group, religion, marital status, or nationality of the consumer as a factor.
- (2) Deny, cancel, or decline to renew a personal insurance policy solely on the basis of credit information.
- (3) Base an insured's renewal rate for a personal insurance policy solely on credit information.
- (4) Take an adverse action against a consumer solely because the consumer does not have a credit card account.
- (5) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating a personal insurance policy, unless the insurer does one (1) of the following:
 - (A) Presents to the commissioner information that the absence or inability relates to the risk for the insurer and treats the consumer as approved by the commissioner.
 - (B) Treats the consumer as if the consumer had neutral credit information as defined by the insurer.
 - (C) Excludes the use of credit information as a factor.
- (6) Take an adverse action against a consumer based on credit information unless the insurer obtains and uses:
 - (A) a credit report issued; or
 - (B) an insurance score calculated;
 - not more than ninety (90) days after the date the personal insurance policy is first written or the renewal is issued.
- (7) Use credit information unless the insurer recalculates the insurance score or obtains an updated credit report at least every thirty-six (36) months. However, the following apply:
 - (A) At annual renewal, upon the request of an insured or the insured's agent, the insurer shall re-underwrite and re-rate the personal insurance policy based on a current credit report or insurance score unless one (1) of the

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following applies:

(i) The insurer's treatment of the consumer is approved by the commissioner.

(ii) The insured is in the most favorably priced tier of the insurer, within a group of affiliated insurers.

(iii) Credit information was not used for underwriting or rating the insured when the personal insurance policy was initially written.

(iv) The insurer reevaluates the insured at least every thirty-six (36) months after a personal insurance policy is issued based on underwriting or rating factors other than credit information.

This clause does not require an insurer to recalculate an insurance score or obtain an updated credit report of a consumer more frequently than one (1) time in a twelve (12) month period.

(B) An insurer may obtain current credit information upon the renewal of a personal insurance policy when renewal occurs more frequently than every thirty-six (36) months if consistent with the insurer's underwriting guidelines.

(8) Use the following as a negative factor in an insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a personal insurance policy:

(A) A credit inquiry not initiated or requested by the consumer for the consumer's own credit information.

(B) An inquiry relating to insurance coverage.

(C) A collection account with a medical industry code on the consumer's credit report.

(D) Multiple lender inquiries:

(i) coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry; and

(ii) made within thirty (30) days of one another.

(E) Multiple lender inquiries:

(i) coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry; and

(ii) made within thirty (30) days of one another.

Sec. 17. (a) If:

(1) a determination is made through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15

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1 U.S.C. 1681i(a)(5) that the credit information of a current
 2 insured was incorrect or incomplete; and
 3 (2) the insurer receives notice of the determination from the
 4 consumer reporting agency or the insured;
 5 the insurer shall re-underwrite and re-rate the insured not more
 6 than thirty (30) days after receiving the notice.

7 (b) After an insurer re-underwrites or re-rates an insured as
 8 described in subsection (a), the insurer shall:

9 (1) make necessary adjustments, consistent with the insurer's
 10 underwriting and rating guidelines; and

11 (2) if the insurer determines that the insured has overpaid a
 12 premium, refund to the insured the amount of overpayment
 13 calculated back to the shorter of the:

14 (A) immediately preceding twelve (12) month period of
 15 coverage; or

16 (B) actual policy period.

17 Sec. 18. (a) If an insurer uses credit information in underwriting
 18 or rating a consumer, the insurer or the insurer's agent shall
 19 disclose, either on the insurance application or at the time the
 20 insurance application is taken, that the insurer may obtain credit
 21 information in connection with the application. The disclosure
 22 must be:

23 (1) written; or

24 (2) provided to the consumer in the same medium as the
 25 application for insurance.

26 The insurer is not required to provide the disclosure statement
 27 required under this section to an insured on a renewal policy if the
 28 insured has previously been provided a disclosure statement.

29 (b) Use of the following sample disclosure statement constitutes
 30 compliance with this section: "In connection with this application
 31 for insurance, we may review your credit report or obtain or use
 32 a credit based insurance score based on the information contained
 33 in that credit report. We may use a third party in connection with
 34 the development of your insurance score."

35 Sec. 19. (a) If an insurer takes an adverse action based on credit
 36 information, the insurer shall:

37 (1) provide notice to the consumer that an adverse action has
 38 been taken, in accordance with the requirements of the
 39 federal Fair Credit Reporting Act, 15 U.S.C. 1681m(a); and

40 (2) provide notice to the consumer explaining the reason for
 41 the adverse action.

42 (b) The reason provided under subsection (a) must be provided



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in sufficiently clear and specific language so that an individual can identify the basis for the insurer's decision to take an adverse action. The notice must include a description of at least the four (4) primary factors that were the primary influences of the adverse action. The use of generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score" does not meet requirements of this subsection. A standardized credit explanation provided by a consumer reporting agency or other third party vendor meets the requirements of this section.

Sec. 20. (a) An insurer that uses an insurance score to underwrite and rate risks shall file the insurer's scoring models or other scoring processes with the department.

(b) A third party may file a scoring model or scoring process on behalf of an insurer.

(c) A filing that includes insurance scoring may include loss experience justifying the use of credit information.

(d) A filing related to credit information is confidential.

Sec. 21. (a) An insurer shall indemnify and defend an insurance producer and hold an insurance producer harmless from and against liability, fees, and costs arising out of or related to the actions, errors, or omissions of the insurance producer, if the insurance producer:

(1) obtains or uses credit information or insurance scores for the insurer;

(2) follows the instructions of or procedures established by the insurer; and

(3) complies with applicable laws and regulations.

(b) This section does not provide a consumer with a cause of action that does not exist in the absence of this section.

Sec. 22. (a) A consumer reporting agency may not provide or sell data or lists that include information submitted in conjunction with:

(1) an insurance inquiry about a consumer's credit information; or

(2) a request for a credit report or insurance score;

including the expiration dates of an insurance policy or other information that may identify periods during which a consumer's insurance expires and the terms and conditions of the consumer's insurance coverage.

(b) The restrictions under subsection (a) do not apply to data or lists a consumer reporting agency supplies to an:

(1) insurance producer from whom the information was

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received;

(2) insurer on behalf of which the insurance producer described in subdivision (1) acted; or

(3) affiliates or holding companies of the insurer described in subdivision (2).

(c) This section does not prohibit an insurer from obtaining a claim history report or a motor vehicle report.

SECTION 2. [EFFECTIVE JULY 1, 2003] Notwithstanding IC 27-2-21, as added by this act, IC 27-2-21, as added by this act, applies to a personal insurance policy that is issued, delivered, amended, or renewed after June 30, 2003.

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